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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/034,531	12/28/2001	Louis Bigo	CU-2792 RJS	1673

26530 7590 04/24/2003

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EXAMINER

LOPEZ, FRANK D

ART UNIT	PAPER NUMBER
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3745

DATE MAILED: 04/24/2003

3

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/034,531

Applicant(s)

BIGO ET AL.

Examiner

F. Daniel Lopez

Art Unit

3745

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 12-15 is/are rejected.
- 7) ☒ Claim(s) 8-11 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 December 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Drawings

Figure *** should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

The disclosure is objected to because of the following informalities: throughout the specification "pressure-free reservoir" (e.g. page 1 line 18, page 7 line 24) should be --reservoir under atmospheric pressure- or something similar, since the prior art reservoirs are open to and therefore under atmospheric pressure (if applicant means that the reservoir is under vacuum to make it under zero pressure, then this should be stated). Appropriate correction is required.

Claim Objections

Claims 8-11 are objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim should refer to others claims in the alternative only. See MPEP § 608.01(n). Accordingly, they have not been further treated on the merits.

Claim Rejections - 35 USC § 112

Claims 1-7 and 12-15 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1 line 1 "A tapping circuit" is confusing, since the body of the claim claims more than just the taping circuit. Suggest that --hydraulic circuit comprising-- replace "tapping circuit...comprises", and in line 11 "the tapping circuit" should be --a tapping circuit--. In claim 1 line 13 and claim 12 line 6 "pressure free reservoir" should be --reservoir under atmospheric pressure--(see objection to the specification).

In claim 15 line 2-3 "tapping and removal valve is a replenishing valve" should be -- tapping and removal valve is a flushing valve--, since a flushing valve is the accepted name for valves removing fluid to be cooled, whereas a replenishing valve allows fluid to flow to the circuit from the reservoir. In claim 15 line 4 "fluid being to be cooled" is not proper English.

Art Unit: 3745

Claims not specifically mentioned are indefinite, since they depend from one of the above claims.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-7 and 15 are rejected under 35 U.S.C. § 102(b) as being clearly anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Cochran et al. Cochran et al schematically shows the tapping and removal valve (34) connected to a reservoir (20, along with an interior space of the pump, by a removal pipe (65), but does not show that the motor has a case defining an interior space, and in which a cylinder block is disposed. One of ordinary skill in the hydraulic closed circuit art would recognize that the interior space of the pump is formed by a case which also holds a cylinder block; and that the motor would be similar to the pump. Therefore, inherently, the motor would also have a case defining an interior space, and in which a cylinder block is disposed. If not, it would have been obvious to one of ordinary skill in this art to make the motor with a case defining an interior space, and in which a cylinder block is disposed, as a matter of engineering expediency.

Claims 1-5 and 15 are rejected under 35 U.S.C. § 102(e) as being clearly anticipated by Takada et al (94 is the discharge pipe (e.g. column 1 line 28-37), and the tapped fluid is cooled (column 2 line 35-46)).

Claims 1, 2 and 6 are rejected under 35 U.S.C. § 102(b) as being clearly anticipated by Komura et al (e.g. fig 11).

Claims 1 and 12 are rejected under 35 U.S.C. § 102(e) as being clearly anticipated by Meier (e.g. column 4 line 47 indicates that line 46 is a motor case drain).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 12 and 13 are rejected under 35 U.S.C. § 103 as being unpatentable over Cochran et al in view of Meier. Cochran et al discloses a hydraulic circuit comprising a hydraulic motor (24) having preferred feed and preferred discharge (62) main pipes communicating with a cylinder block disposed within a casing (see discussion above); a tapping circuit comprising a single tapping and removal valve (34) connected to the discharge main pipe by a tapping pipe and to a reservoir (20) by a removal pipe; wherein the tapping and removal valve is contained within a cartridge (54, see e.g. fig 2) mounted to the hydraulic circuit; but does not disclose that the removal pipe is connected to the internal space of the hydraulic motor.

Meier teaches, for a hydraulic circuit comprising a hydraulic motor (26A) having preferred feed and preferred discharge main pipes communicating with a cylinder block disposed within a casing; a tapping circuit comprising a single tapping and removal valve (42) connected to the discharge main pipe by a tapping pipe and to a reservoir by

Art Unit: 3745

a removal pipe (46); that the removal pipe can be connected to an internal space of the hydraulic motor (column 4 line 45-50).

Since the connection of the removal pipe of Cochran et al and Meier are functionally equivalent in the hydraulic closed circuit art; it would have been obvious at the time the invention was made to one having ordinary skill in the art to connect the removal pipe of Cochran et al to the internal space of the hydraulic motor, as taught by Meier, as a matter of engineering expediency.


Inherently there is a pipe connecting the internal space of the motor to the reservoir, similar to that connecting the pump casing to the reservoir. If not it would have been obvious at the time the invention was made to one having ordinary skill in the art to connect the internal space of the motor to the reservoir by a pipe, for the purpose of draining fluid from the motor case to the reservoir.

Conclusion

Claim 14 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. § 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dan Lopez whose telephone number is (703) 308-0008. The examiner can normally be reached on Monday-Thursday from 6:30 AM -4:00 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ed Look, can be reached on (703) 308-1044. The fax number for this group is (703) 872-9302. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0861.



F. Daniel Lopez
Primary Examiner
Art Unit 3745
April 18, 2003